IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/01/2004

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.9589 of 1999

S. Thangiah .. Petitioner

-Vs-

1. The Chief Engineer (Personnel)
T.N.E.B.,800, Anna Salai
Chennai 600 002.

2. The Superintending Engineer
Tirunelveli Electricity
Distribution Circle
Tirunelveli 11. .. Respondents
Petition under Article 226 of the Constitution of India praying for a writ of Mandamus as stated therein.

For Petitioner : Ms.S. Girija
For Mr.V.Krishnamurthi

For Respondents : Mr.V. Radhakrishnan

:O R D E R

Concededly, the petitioner's father one Mr.Subbiah, who was working as Helper in the respondent Board died in harness on 8.12.1988, while he was in service, leaving his wife Madathi Ammal and two sons S. Krishnan and S.Thangiah, the petitioner herein.

2. The petitioner made a representation to the respondent Board seeking appointment on compassionate ground on 11.2.1994. But the same was returned by the second respondent on 28.2.1994 requiring the petitioner to furnish some more details. Therefore, the petitioner's mother resubmitted the application with the required enclosures on 22.3.1 994, based on which, the second respondent, in his proceedings dated 17.4.1994 directed the Assistant Executive Engineer (Distribution), Puliangudi, to hold a field enquiry with respect to the claim of the petitioner, who, in his proceedings dated 23.5.1994, recommended the petitioner for employment on compassionate ground. The recommendations of Assistant Executive Engineer dated 23.5.1994 was thereafter forwarded by the second respondent to the first respondent on 6.12.1994. But on 10.1.1995, the first respondent rejected the application of the petitioner for appointment on compassionate ground on the ground that the

petitioner's brother S.Krishnan was already employed. Hence, the petitioner made a further representation to the first respondent on 31.1.1995 stating that his brother S.Krishnan was employed even prior to the death of their father, viz. in the year 1994 and got married in the year 1995 and from then, he was living separately. Following the said representation dated 31.1.1995, the petitioner has also made further representations on 4.8.1995, 5.10.1995, 3.12.1995 and 2 4.12.1996.

3. Complaining that no order was passed on the said representations till date, the petitioner seeks a writ of Mandamus directing the respondents to extend employment assistance to him, as stipulated in B.P.(Ch.) M.S.No.330 dated 2.11.1993.

4. By proceedings dated 2.11.1993, the respondent Board has given clear guidelines to be followed by the officers concerned in the matter of considering and disposing of the applications for appointment on compassionate ground. The relevant portion of the same reads as follows:
" .. It is considered that if a member of the family is already in employment and supports the family then the restriction that if there is already any earning member in the family of the Government servant who died in harness, the other dependants of the deceased Government servant will not be eligible for compassionate appointment may be applied. When a dependant of the family is employed, the factors to be ascertained are, whether he is regularly employed and is actually supporting the family. If that person was employed even before the death of the Government servant and was living separately without extending any help to the family then the case of other eligible dependant will be considered. " (emphasis supplied)

5. The guidelines given by the Board referred to above is a clear indication to the authorities. As per the said guidelines, even in the case where any of the member in the family of the Government servant, who died in harness, is employed, the officers has to consider as to whether such person was employed prior to the death of Government servant and if so, whether he was living separately without extending any help to the family.

6. In the instant case, there was a clear representation by the mother of the petitioner as well as other son viz. S.Krishnan, that the said S.Krishnan was employed and he got married and living separately prior to the death of their father and this relevant factor was not taken into consideration by the employer, while considering the application of the petitioner for appointment on compassionate ground, which is contrary to the Board proceedings in B.P.(Ch.) M.S.No.330 dated 2.11.1993. Hence, the impugned order is quashed and the respondent Board is directed to pass appropriate orders on merits, in the light of the recommendations of the Board Proceedings viz. B.P.(Ch.) M.S.No.330 dated 2.11.1993, within six weeks from the date of receipt of a copy of this order.

7. The statement of the learned counsel for the petitioner that the petitioner would not claim any retrospective benefit is recorded and it is made clear that the petitioner, in any event, shall not be entitled to any retrospective benefit.

The writ petition is ordered accordingly. No costs.

Internet : Yes
Index : Yes

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To

1. The Chief Engineer (Personnel)
T.N.E.B., 800, Anna Salai
Chennai 600 002.

2. The Superintending Engineer
Tirunelveli Electricity Distribution Circle
Tirunelveli 11.